

GOVERNMENT OF ANDHRA PRADESH
ABSTRACT

Suits – Arbitration – An amount of Rs. 1,14,50,000/- as full and final settlement of Arbitration Award dt: 27-12-1991 in OP Nos' 113/92, 114/92 and 112/92 in respect of the work relates to (3) packages for excavation of Yeleru Left Main Canal including lining from KM 69.00 to 70.705, KM 76.00 to 77.00 and KM 77.00 to 78.00 awarded to M/s. Gayatri Engineering Company, Hyderabad vide Agreement No. 5/86-87, 6/86-87 & 8/86, dated: 16-1-1987 – Sanctioned – Orders – Issued.

IRRIGATION & CAD (ARBITRATION) DEPARTMENT

G.O.Ms. No. 54

Dated: 23 -04-2011

Read the following:

1. Arbitral Awards dated: 27-12-1991.
2. From the Principal Sr. Civil Judge Court Judgement and decree dated 7-3-2000 In OP. No. 113, 114 and 112 of 1992.
3. From the Hon'ble High Court of A.P., Hyd. common judgement dated 17-10-2008 in CMA. Nos. 1773, 1774 and 1777 of 2000 and in CRP Nos. 2623, 2630, 2631 of 2000.
4. From M/s. Gayatri Projects Limited, Hyderabad, Letter No. GPL/YLMC/08-09/01 dated: 19-2-2009.
5. From the Engineer-in-Chief (Irrigation), Hyderabad Lr. No. ENC(I)/DCE(GDS)/OT2/AE/F.28/1728/90, dt: 06-03-2009.
6. From the Advocate General, High Court, Hyd. Lr. No. 750/Opinion No. 72 of 2009, dt: 02-09-2009.
7. Govt. Memo No. 6240/ARB/2009-2, dt: 1-12-2009.
8. From the Engineer-in-Chief (Irrigation), Hyderabad Lr. No. ENC(I)/DCE(GDS)/OT2/AEE2/F..28/1728/90/10, dt: 30-6-2010.
9. From M/s. Gayatri Projects Limited Hyderabad Letter No. GPL/P.S./YLMC/2010:2011/1430A Dt: 4-10-2010.

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ORDER:

The Engineer-in-Chief (Irrigation), Irrigation & CAD Department, Hyderabad in his letters 5th and 8th read above, has reported that that the work relating to the "Excavation of Yeleru Left Main Canal from (!) KM 69. 00 to 70.705 (2) KM 76 to 77.00 and (3) KM 77.00 to KM 78.00 including lining was entrusted to M/s. Gayatri Engineering Company, Hyderabad vide Agreement No. 5/86-87, 6/86-87 & 8/86, dated: 16-1-1987. As per the agreement conditions, contracting agency has to complete the above three works within (15) months from the date of handing over the site. The date of handing over site is 25-1-1987. Hence, the date of completion is 24-4-1988. Since inception of work, the progress of the work is not as per the time schedule. The department addressed the firm to improve the progress. But the firm has not improved the progress, even though extension of time was sanctioned several times at the request of the Contractor. Finally the Executive Engineer, YRC Division, Narsipatnam deleted the work by invoking clause 60© of PS to APSS. Aggrieved by the above action, the contractor filed OP No. 31/90, OP.No. 32/90, OP. No. 33/90, in Sub-Ordinate Judge Court, Visakhapatnam. The Sub-Court appointed Justice K. Punnaiah, Retd. Judge of High Court of Andhra Pradesh as Arbitrator on 10-7-1990. The Arbitrator entered into the reference on 1-8-1990 and

the contracting agency put forth total six No. of claims to a tune of Rs. 3,27,18,504/- and 18% of interest (OP No. 106/92), three No. of claims Rs. 27,03,499/- and 18% of interest (OP No. 107/92) and three No. of claims Rs. 20,37,310/- and 18% of interest (OP No. 108/92) respectively. The arbitrator after hearing both sides delivered award on 27-12-1991 duly conducting number of sittings. The total award amounts for the three cases are Rs. 1,31,62,834/- with 16% interest (OP. No. 106/92), Rs. 6,30,449/- with 16% interest (OP No. 107/92), and Rs. 6,67,318/- with 16% interest (OP No. 108/92) respectively. The Department filed O.Ps on the above three cases to set aside the award. The firm filed OP 113/92, 114/92 and 112/92 to make the award as rule of court. The Hon'ble Prl. Civil Judge Court, Visakhapatnam pronounced judgment on 7-3-2000 for the above (3) cases and making the awards as rule of court by modifying the interest rate payable at 6% P.A. on the award amount from the date of petition till the date of payment.

2. The Department approached the Hon'ble High Court of A.P. and filed CMA No.1773/2000 against order in OP No. 108/92 & CRP 2631/2000 against order in OP No. 112/92, CMA 1774/2000 against order in OP No. 106/92 and CRP 2630/2000 against order in OP No. 113/92 and CMA 1777/2000 against order in OP No. 107/92 & CRP 2623/2000 against order in OP No.114/92 respectively against the judgement delivered by the Lower Court. In the meanwhile, the firm filed IA 90/2000 in OP 113/92, IA 91/2000 in OP No.114/92 and IA 92/2000 in 112/92 for enhancement of interest.. The Prl. Sub-Ordinate Judge Court, Visakhapatnam has dismissed the IA 90/2000, IA 91/2000 & IA 92/2000 in favour of the Department. Subsequently, the firm has also filed EP No. 352/2002 in OP No. 113/92 EP No. 353/2002 in No. 114/92, EP No. 351/2002 in OP No. 112/1992 for implementing the decree. Again the Department approached the High Court for granting stay order. The High Court of A.P. granted stay order on 3-2-2003 with a condition to deposit ½ Decretal amount within a period of 2 months from the date of interim stay granted. Accordingly, the department has deposited half of decretal amounts on the above three cases to a tune of Rs. 1,10,95,967/- (1.00,21,632/- + 5,21,907/- + 5,52,428/-) on 16-02-2004. As the matter stands thus, the Hon'ble High Court in its common judgement dt: 17-10-2008 while allowing the following CMA's and CRP's in part and modified the decree of the Lower Court as follows:-

1. CMA No.1773/2000 in OP No. 108/92 & CRP 2631/2000 in OP No. 112/92.
2. CMA 1774/2000 in OP No. 106/92 and CRP 2630/2000 in OP No. 113/92.
3. CMA 1777/2000 in OP No. 107/92 & CRP 2623/2000 in OP No.114/92.

Decree & Orders:

- i. That the award of the arbitrator awarding an amount of Rs. 3,70,000/- as confirmed by the Lower Court in OP No. 107/02 & OP No. 114/92 under claim No.2 be and hereby is set aside.
- ii. That the award of the arbitrator awarding an amount of Rs. 4,72,500/- as confirmed by the Lower Court in OP No. 108/92 & OP No. 112/92 under Claim No. 1 be and hereby is st aside the amount is restricted to Rs. 3,68,000/- only.

- iii. That the award of the arbitrator awarding an amount of Rs. 15,27,250/- as confirmed by the Lower Court in OP No. 106/02 & OP No. 113/92 Under claim No. 4 be and hereby is set aside and the contractor is entitled to Rs. 4,00,000/-.
- iv. That the order claims 1, 3, 5 and 6 be and hereby are confirmed.
- v. That save as aforesaid, the decree of the Lower Court do stands confirmed in all other respect and
- vi. That there shall be no order as to costs in this CMAs and CRPs.

3. In this connection, the Advocate General in his letter dated: 21.1.09 while communicating the certified copies of the decrees and order and common judgement on the above CMAs and CRPs has opined that these are not fit cases to carry in appeal to the Supreme Court. After deposed the above CMAs & CRPs, the firm in their letter 4th read above has requested the Government to convene a meeting for settlement of the amount payable to them in terms of GO Rt. No. 103 dated 24-01-2008. The learned AG High-Court of AP who has been consulted has stated in his letter 6th read above that since no further appeals have been preferred against the judgment of the Hon'ble Court in CMA Nos. 1773,1774 and 1772/2000and CRP No: 2623, 2630 and 2631/2000 dated:17-10-2008, the judgment of Hon'ble High Court has become final and binding on the state . Therefore, the state is obligated to comply with the judgment of Hon'ble High Court . He is of the view that since the Contractor willing for settlement in terms of the GO Rt, No: 103 dated 24-1-2008, there is no impediment for such negotiated settlement , in terms of the above said GO, if applicable to the Contractor. Based on the opinion of the learned AG, the matter has been discussed in the concerned Conciliation Committee with the above contracting firm. During the final Conciliation with the above firm on 27-09-2010, the agency has agreed for Rs. 114.50 Lakhs (Rupees One Crore Fourteen lakhs and Fifty thousand only) as final settlement of its claim. The representative of M/s. Gayatri Engineering Company, Hyderabad has submitted a declaration on a notarized affidavit to the effect to withdraw all legal proceedings in the court in respect of the above work, after realization of agreed amount.

4. Government after careful examination of the matter, hereby accord sanction for an amount of Rs. 1,14,50,000/- (Rupees One Crore Fourteen Lakhs and Fifty Thousand only) as full and final settlement including interest of Arbitration Award dated: 27-12-1991 in OP No's. 113/92, 114/92 and 112/92 in respect of the work relates to (3) packages for excavation of Yeleru Left Main Canal including lining from KM 69.00 to 70.705, KM 76.00 to 77.00 and KM 77.00 to 78.00 awarded to M/s. Gayatri Engineering Company, Hyderabad vide Agt No: 5/86-87 ,6/86-87, 8/86, dt: 16-1-1987.

5. The amount sanctioned in para (4) above shall be debitable to the following Head of Account:-

“4701 – Capital Out Lay on Major & Medium Irrigation; 01 – Major Irrigation (Commercial); M.H - 116 Y R Scheme; G.H.11 Normal State Plan ; S.H. (27) Canals and Distributories; 530 Major Works; 531 Other Expenditure (Voted)”.

6. The Engineer-in-Chief (Irrigation), Irrigation & CAD Department, Hyderabad is directed to deposit the above sanctioned decretal amount in the respective court to the credit of above (3) OP's i.e., 113, 114 and 112 of 1992 for avoiding further legal complications in E. P. Nos. 352, 353 and 351 of 2002.

7. This order issues with the concurrence of Finance (W &P) Department vide their U.O. No. 5729/F7(A1)/10-1, dt: 21.12.2010.

(BY ORDER AND IN THE NAME OF THE GOVERNOR OF ANDHRA PRADESH)

**DR. PRASANTA MAHAPATRA
PRINCIPAL SECRETARY TO GOVERNMENT**

To

The Engineer-in-Chief, (Irrigation), Irrigation & CAD
Department Errummanzil, Hyderabad.
The Accountant General, A.P. Hyderabad.
The Director of Works Accounts, A.P. Hyderabad.
The District Treasury Officer, Visakhapatnam
The Pay and Accounts Officer, Visakhapatnam
The Superintending Engineer, Irrigation Circle, Dowlaiswaram

Copy to:

P.S. to Special Chief Secretary to Chief Minister
The P.S. to Minister (M & MI)
The P.S. to Prl. Secy. to Govt., I & CAD Department.
The Finance (W &P) Department.
The I & CAD (P & B) Department.
The Advocate General, High Court of A.P., Hyderabad.
S.F./S.C.

//Forwarded: By Order//

Section Officer